IN THE
Supreme Court of the United States

(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE

Date of term _____

BETTY L. SNEED
Petitioner,
v.
U.S. DEPARTMENT OF LABOR, OFFICE OF
WORKER COMPENSATION PROGRAM
Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIOR ARI

Betty L. Sneed, Prose
3721 Chelton Rd.
Shaker Hts., Ohio
216-921-3001

HIRO

Questions

1. Did the defense depart from the accepted and usual course of judicial proceedings? - 20 Code of Federal Regulations (CFR) 10.400 (b) - 10.5 (f) - Administrative Law Judge (ALB) 29 CFR 18.29 of The United States of America Merit Protection Board. The Hearing on January 30, 1995, scheduled by the Office of Worker's Compensation Programs (OWCP) - Federal Employees Compensation ACt (FECA) "Election of Benefits form CA-1105.

2. Was my first and Amendment to the U.S. Constitution violated? States- congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

3. Was my Fourteenth Amendment to the U.S. Constitution violated? States All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state within they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Did the Secretary of Labor exceed the scope of its delegated authority? USCA 8101 et seg., 8128 (b) under Workers' Compensation - 1910 states Judicial review of Federal Employees Compensation Act (FECA) benefits determination is prohibited except in cases alleging that the Secretary of Labor violated claimants constitutional rights or exceeded scope of his congressional mandate. This was applied in Hanauer v. Reich 82 f. 3d 1304 (4th Cir. 1996)

5. Did the defense default and erred when answering the Complaint? Title 20 of the Code of Federal Regulation (CFR) 402.205.

6. Should my amendment be accepted? Supplement to the complaint-First & fourteenth Amendment to the U.S. Constitution- LRL Properties v. Portage Metro Auth.-5 U.S.C.A. 8101 et. seg., 8128 (b)- Hearing of January 30, 1995. 20 CFR 402.205.

7. Should I be awarded workers' compensation? 20 CFR 10.5 (f) - 10.400 (b) - 10.5 (m) 10.115 (f) - 10.330 through 10.33 "Statement of Facts" - FECA "Election of Benefits" CA- 1105.

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CITATIONS OF OFFICIAL REPORTS, ORDERS

The citations of official reports of opinions and orders entered are the Administrative Law Judge (ALJ) of the USA Merit Systems Protection Board decision dated July 30, 1985 - Granted me disability because of my on the job injury and found my injury is causal related and I am unable for gainful employment. Chevz v Office of Personnel Management (OPM) 5 U.S.C.A. 8337 (a) 5 U.S.C.A. 8331 (6) (West 1980) 9 MSPB 159 (1982) Kirwin v. OPM, 24 MSPB 683 (1983).

The denied Order from the US District Court, Northern District of Ohio- Eastern Division filed December 26, 2000. The judge cites Celotex Corp. v. Catrett, 477 U.S. 317 (1986) Adickes v. Kress & Co., 398 U.S. 144 (1970) - White v. Turfway Park Racing Ass'n., 909 F .2d 941, 943-44 (6th Cir. 1990) Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) - Kissinger v. Reporters Committed for Freedom of The Press, 445 U.S. 136, 139 (1980) - Jet v. Sewage Aeration Systems, 165 F. 3d 419, 425 9th Cir. 1999- Owens v. Brock, 869 F .2d 1363 (6th Cir. 1988).

The U.S. Court of Appeals Order filed June 18, 2001 affirmed the district court. It cites Kincaid v. Gibson, 236 F .3d 342, 346 (6th Cir. 2001) 5 USC 552 (a) (4) (b); - Kissinger v. Reporters Comm. for Freedom of the Press, 445 U.S. 136, 150 (1980) - Cardamone v. Cohen 241 F .3d 520, 525 (6th Cir. 2001 -5 USC 552 a (g) (1) (D) - Fisher v. Roberts, 125 F .3d 974, 977 (6th Cir. 1997; - LRL Properties v. Portage Metro Hous. Auth., 55F .3d 1097, 1104 (6th Cir. 1995) 5 USC 8102; - Jones v. TVA, 948, 265 (6th Cir. 1991) 5 USC 8128 (b) Owens v. Brock, 860 F .2d 1363, 1367 6th Cir. 1988.

The U.S. Court of Appeals Order filed August 27, 2001 was for Rehearing En Banc- which was denied.

JURISDICTION

The U.S. Supreme Court should have jurisdiction in my case- because the U.S. District Court or the Sixth Circuit Appeals Court defaulted by now answering the complete complaint depriving me of my first & fourteenth U.S. Constitutional rights. The dates of orders to be reviewed is the U.S. District Court order of 12-26-00, the Sixth Circuit order, 6-18-01 & 8-27-01. The parties to the proceedings is the US District Court eh Sixth Circuit Appeals Court & The US Department of Labor - Office of Workers

Compensation Programs (OWCP). The statutory Provisions are as follows: The US Constitution First Amendment & The US Constitution Fourteenth Amendment. 5 USA 8101 et seg., 8128 (b). CFR Title 29 sec, 18.29. The following provisions are from Title 20 of the CFR- 402.205 10.400 (b) 10.823 10.824 10.5 (f) 10.5 (m) 10.115 10.330 through 10.333 10.332 & 10.403 8102 Staack v. United States Secretary of Labor 841 Fd2 278, 281 (9th cir. 1988, MCorp, 502 U.S. at 43, 112 S. Ct. at 465-66-Charles Kincaid, individually and on behalf of all others similarly situated, v. Betty Gibson et al - Cardamone v. Cohen, 241 F. 3d. 520, 525 6th cir. 2001. Fisher v. Roberts, 125 f .3d 974, 977 (6th cir. 1997) - LRL Properties v. Portage Metro Hou. Auth., 55 F .3d 1097, 1104 (6th cir. 1995) Jones v. TVA, 948 f.2d 258, 265, (6th cir. 1991) McCall v. United States, 901 F. 2d 548, 549 (6th cir. 1990) Owens v. Brock, 860 F 2d. 1363, 1367 (6th cir. 1988) Hanauer v. Reich 82 f. 3d 1304 (4th cir. 1996).

CONSTITUTIONAL PROVISIONS, STATUES, REGULATIONS AND CITATIONS

Title 29 of CRF 18.29 shows the authority of the Administrative Law Judge which includes (5) issues decisions & orders (6) take any action authorized by the Administrative Procedure Act (8) where applicable, take any appropriate action by the Rules of Civil Procedures for the U.S. District Court, issued from time to time & amended pursuant to 28 USC 2072; 2072 & (9) do all things necessary to enable him or her to discharge the duties of the office. The Administrative Law Judge already make a decision stating my inability for gainful employment & its casual reception to my on the job injury. This made me eligible for the FECA Election of Benefits CA-1105. "Also see STATEMENT OF FACTS FROM" FROM OWCP."

These laws are taken from Title 20 of the CFR. 10.400 (b) - temporary total disability is defined as the inability to return to the position held at the time of injury or earn equivalent wages, or perform other gainful employment, due to the work-related injury. Except as presumed under paragraph (a) of this section, an employee disability status is always considered temporary pending return to work. I cannot return to the position held or earn equivalent wages or perform gainful employment 10.823 & 10.834 addresses information from medical providers. All med-

ical information by physicians was given. 10.5 (f) defines disability as the incapacity because of an employment injury, to earn the wages the employee was at the time of the injury - it may be partial or total. My employment injury does not allow me to earn the wages at the time of injury. I have a partial disability. 105 (m) addresses impairment - any anatomic or functional abnormality or loss after maximum medical improvement.
I have a 25% accepted disability to the left knee 10.115 (f) under Evidence & Burden of Truth - states in all claims the claimant is responsible for submitting, or arranging submittal of medical reports from the attending physician. For wage loss benefits, the claimant must also submit medical reports from the attending physician showing that the condition claimed is disabling. The rules are fond for submitting medical reports are found in 10.330 through 10.333. All of the rules was followed. 10.332 states - in all cases of serious injury or disease, especially those requiring hospital treatment or prolonged care of the Office of Workers Compensation Programs (OWCP) will request detailed narrative reports from the attending physician at periodic intervals. All of these laws of the CFR apply to my case. The physician will be asked to describe continuing medical treatment of the condition accepted by OWCP, a prognosis, a description of work limitations, if any and the physician's opinion as to the continuing casual relationship of work limitations, if any and the physician's opinion as to the continuing casual relationship between the employees condition & the factors of his or her federal employment. My left knee was operated on - it is called a menisectomy. The physicians gave all the required information-stating I cannot perform gainful employment & my condition is casual related. 10.403 addresses - when & how compensation is paid. It is stating the wage earning capacity that your earning may form the basic for payment for partial disability.

Staack v. United States Secretary of labor 841 F. 2d 278, 281 (9th cir. 1988). This citation was based on Kync. this citation was in direct conflict of with the provisions of the national Labor Relations Act (NLRA). The secretary argued that the District Court erred in holding that the Kyne exception applied to 5 USCA- 8128 (b) - which states review is neverthe less available to consider allegations of clear statutory mandate or prohibition. The District Court held the Kyne exception applied. The Supreme Court agreed & held that the district court had juris-

diction to strike down an order of the Board made in access of its delegated powers and contrary to specific prohibition (NLRB) Id at 188, 79S. Ct. at 183-84. I am applying 5 USCA- 8128 (b because clear statutory mandate, prohibition & constitutional claim applies. This is based on Hanauer v. Reich 82 f.3d 1304 (4th cir. 1996) - violations of the laws presented in the CFR, the hearing that was not addressed, the ALJ's decision of the Merit Protection Board was not considered, or the FECA's Election of Benefits.

I am also citing MCorp, 502 U.S. 502 U.S. at 43, 112 S. Ct. at 465-66. It states that the judiciary is the final authority on issues of statutory construction and it mush reject administrative construction that is contrary to clear on congressional intent.

The Defendant, District Court-Sixth Circuit did their own construction of my case by not answering the hearing completely or the supplement of my complaint & amendment to my complaint.

Charles Kincaid, individually and on behalf of all the others similarly situated Capri Coffer, individually and on behalf of all others similarly situated. v. Betty Gibson, et al., Summary Judgment is appropriate when the evidence shows "that there is no genuine issues as to any material fact and that moving party is entitled to judgment as a matter of law (FED 56 (c). This involves a First & Fourteenth Amendment violation. Kincaid & Coffer presented evidence that the university official violated their First Amendment rights to prevail as a matter of law.

My First Amendment rights were violated by- the defense abridging my freedom of speech, press - the right to redress my grievances - which includes the laws of the CFR that I presented - hearing information - FECA's Election of Benefits and the ALJ of the Merit Protection Board.

My Fourteenth Amendment rights were violated because the, District Court and the Sixth Circuit did not give me liberty to go forward with my complaint with the FECA Election of Benefits - due process or hearing information or the ALJ of the Merit Protection Board and the CFR I presented. These are genuine issues. The courts and defense exempted my privileges and immun ities - equal protection of the laws and abridged privileges of liberty-which I am entitled to.

The Sixth Circuit is citing Cardamone v. Cohen, 241 F .3d 520, 525 (6th cir. 2001) quoting 5 U.S.C. 552a (g) 1) (D) states that a plaintiff may bring a civil action against an agency that fails to

comply with any provision of the Privacy Act in such a way as to have an adverse effect on an individual. OWCP states that no documents held been withheld.

The Hearing Information was withheld. 20 CFR 402.205 states- If the commissioner or a designee, upon review, affirms the denial of your request for records in, whole or in part, you may ask the U.S. District Court to review that denial. See 5 USC 552 (a) (4) (b) If we fail to act on your request for a record of review of a denial of such a request within the time limits in Sec. 402.140 (a) or in Sec. 402.190 (b), you may ask a U.S. District Court to treat this as if the Commissioner had denied the request. The denial of records were in part. These actions were intentional and these actions had an adverse impact on me- by not allowing me to go forward. To survive summary judgement one must establish a genuine issue of material fact. The CFR I presented, hearing information - ALJ of the Merit Protection Board - FECA's Election of Benefits CA- 1105 are all genuine issue of material fact.

The Sixth Circuit is cited Fisher v. Roberts, 125f .3d 974, 977 (6th cir. 1997) LRL properties v. Portage Metro Hou. Auth., 55F .3d 1097, 1104 (6th cir. 1995) - which the District Court denied my motion to amend my complaint. The Sixth cir. states - In her amended complaint, Sneed claimed that she suffered a knee injury during the course of her employment with the United States Postal Service, which rendered her disabled. A claim for such an injury is covered by the Federal Employees' Compensation Act (FECA). My amendment was based on the denial of the supplement to my complaint- which is part of the complaint. Defendant did not follow the FECA guidelines which includes the CFR - decisions of the Merit Protection Board, all hearing information, the Election of Benefits which is a FCEA claim.

In the LRL Properties v. Portage Metro Auth.'s case - this case states I believe the district court abused its discretion and should have been directed by the court to accept the amended complaint on reman d. The Plaintiff's amended complaint sufficiently states their Fourteenth Amendment claims and argued that the district court used the incorrect statue of limitations in determining that the bulk of their allegations were time-barred. Finally, plaintiffs contend that the district court erroneously concluded that the plaintiff filed to state substantive and procedural due

process claims and equal protection claim for relief could be granted.

(1) My amendment was addressed through the OWCP for FECA. OWCP did not take into consideration the FECA option "Election of Benefits", the CFR codes or the ALJ's decision for the Merit Systems Protection Board. The amendment added allegations of fact and requested workers' compensation. My Amendment was timely. (This is a deprivation of my First Amendment Right (I have a right to petition the government for redress of grievances, I have the right for freedom of speech and the press. The Fourteenth Amendment Rights guarantee due process and equal protection of law.

The Sixth Circuit cites U.S.C. 8102; Jones v. TVA, 948 F .2d 258, 265 (6th cir. 1991) McCall v. United States, 901 F .2d 548, 549 (6th The Secretary of Labor violated my constitutional rights & exceeded the scope of its delegated authority. The Election of Benefits was presented at that hearing. The Supplement to my complaint is the Election of Benefits' form with a letter to OWCP that was not answered. If the supplement to my complaint had been allowed. Therefore to amend would not be futile.

In Jones v. TVA the focus is error. When Jones was convicted of a felony possession of a firearm 'the instruction given the jury is the focus of a appeal. The instruction was erroneous because it instructed the jury to find that Jones was guilty of an element of the crime with which he was charged. The defense, the district court- and the sixth circuit did not follow the laws of the CFR that applied or the FECA guidelines. The defense- district court and sixth circuit departed from accepted and usual course of judicial proceedings.

Owens v. Brock- In a (FECA) a former federal employee appealed a decision of the Department of Labor's office of Compensation Programs to terminate employees temporary total disability benefits. Owens amended for attorney fees. he was not granted the amendment. The Court of Appeals cited 5 U.S.C.A. 8101 et. seg., 8128 (b) under Workers Compensation - 1910 states Judicial review of Federal Employees Compensation Act benefit determination is prohibited except in cases alleging that the Secretary of Labor violated claimants constitutional rights or exceeded scope of his congressional mandate. My rights were violated OWCP did not go by the CFR's which is required. OWCP did not address the ALJ's decision of the Merit

Protection Board and did not go by the FECA's Election of Benefits CA- 1105 did not go by the FECA guidelines or the hearing information. Therefore, to amend would not be futile. I do not have capacity because of my employment injury to earn the wages as the time of my injury - 20CFR10.5 (f). The defense exceeded their congressional mandate 5 USCA 8101 et seg., 8128 (b). My knee injury prevented me to render gainful employment with U.S. Postal Service. 20 CFR 10.40 (b) which is required for workers' compensation.

The review is sought of the U.S. District Court did not address the constitutional claim-did not answer the complete complaint filed July 27, 2000- and the supplement to my complaint dated September 1, 2000 or the Amendment to my complaint November 29, 2000. The U.S. District Court erred by not answering the CFR Title 29 18.29. These codes of the CFR under Title 20 - 402.205 - 10.400-823-10.824.105 10.5(m) 10.115 (f) - 10.330 through 10.332-10.403. These are the basis for federal jurisdiction in the court of the first instance.

The review of the Sixth Circuit is sought because they did not address constitutional claim-did not complete complaint, supplement to the complaint or amendment to the complaint. Sixth circuit did not address the complete appeal sought- which is dated February 7, 2001, the Appellants Reply Brief- dated April 9, 2001 or The Petition For Rehearing En Banc dated June 6, 2001. The sixth circuit erred by not addressing the CFR- Title 29 18.29. Title 20 of the CFR section 402.205.10.400- 10.823-10.824-10.5 (f) 10.5 (m) 10.115 (f)- 10.330 through 10.332-10.403.

STATEMENT OF CASE, FACTS

On July 28, 2000- I Betty L. Sneed a former U.S. Postal Service employee filed a Complaint in the U.S. District Court under the Freedom of Information/Privacy Act- for the release of documents & for the release of Hearing Information- I had on January 30, 1995- that the Office of Workers Compensation Programs (OWCP) would not give me information about. I filed a Supplement to the Complaint September 1, 2000, which was a letter I had written to the OWCP requesting the Federal Employees Compensation Act's (FECA) Election of Benefits form- CA- 1105 in which I had elected workers compensation under FECA. I amended my complaint November 29, 2000

requesting workers compensation. The complete complaint was not answered nor was the Supplement to my Complaint. The Amendment was not allowed and I was denied workers compensation. I am on disability for my on the job left kneed injury. "The "Statement of Facts" was included in my Brief to the Sixth Circuit. This document is from OWCP. I am including that document. The Election of Benefits document CA-1105 was in the supplement to my complaint.

The facts material to consideration of the questions presented are - (1) Did the defense depart from accepted and usual course of judicial proceeding? The district court erred by not considering the CFR laws that I presented, the ALJ of The USA Merit Protection Board, the hearing January 10, 1995 or the FECA Election of Benefits CA-1105. This is a departure from the accepted and usual course of judicial proceedings. this was passed on to the Sixth circuit. (2) Was my First Amendment rights violated. District Court and Defendant violated my first amendment rights abridging the freedom of speech, press, and to petition the government for a redress of my grievance. This was passed on to the Sixth Circuit. (3) Was My Fourteenth Amendment rights violated? Defendant and the District Court deprived me of due process of law and equal protection of the law. This was passed on to the Sixth Circuit. (4) Did the secretary exceed the scoop of its delegated authority? Defendant and the District Court did not abide by 5 USCA 8101 et seg., 8128 (b) thereby violating my constitutional rights. This was passed on to the Sixth Circuit. (5) Did the Defense default and erred when answering the complaint? The defendant and district court did default and erred - 20 CFR 402.205 states if the commissioner or designee, upon review, affirms the denial of your request for records in whole or in part you may ask the US District Court to review that denial. SEE 5 USC 552 (a) (4) (b). If we fail to act on your request within the time limits in sec. 402.140 (a) or in sec. 402.190 (b) you may ask a US District Court to treat this as if the Commissioner had denied the request. The Defendant district court denied me hearing information of January 30, 1995 - did not address the Supplement to my complaint which is the FECA election of Benefits form CA-1105 or the amendment to my complaint requesting workers' compensation. This was passed on to the Sixth Circuit. (6) Should my amendment be accepted? The District Court did not allow my amendment and passed it on to the Sixth Circuit. My

amendment should be accepted because of the supplement to my complaint was not answered. If the supplement had been answered - the amendment would have been allowed. First and Fourteenth amendment violations-LRL Properties v. Portage Metgro Auth. - 5 USCA 8101 et seg., 8128 (b) - Hearing January 30, 1995. 20 CFR 402.205. Therefore, my amendment would not be futile. (7) Should I be awarded workers compensation? yes, because of 20 CFR 10.5 (f)- 10.400 (b) - 10.5 (m)- 10.115 (f) - 10.330 - Statement of Facts (included.)" The Statement was also included in my Brief to the Sixth Circuit. Election of Benefits" - CA-1105. I gave the district court this information - It was passed on to the Sixth Circuit.

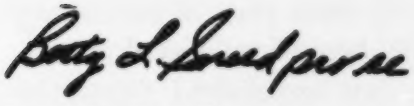
The review is sought of the US District Court did not address the constitutional claim-did not answer the complete complaint filed July 27, 2000- and the supplement to my complaint dated September 1, 2000 or the Amendment to my complaint dated November 29, 2000, the US District Court erred by now answering the CRF. Title 29 18.29. These codes of the CFR under Title 20-402.205 - 10.400-10.823-10.824-10.5 (f) 10.5 (m) 10.115 (f) - 10.330 through 10.332-10.403. These are basis for federal jurisdiction in the court of first instance.

The review of the Sixth Circuit is sought because they did not address constitutional claim-did not complete complaint, supplement to the complaint or amendment to the complaint. Sixth Circuit did not address the complete appeal sought - which is dated February 7, 2001, the Appellants Reply Brief - dated April 9, 2001 or The Petition For Rehearing En Banc dated June 6, 2001. The sixth circuit erred by not addressing the CFR - Title 29 18.29, Title 20 of the CFR section 402.205-10.400-10.823-10.824-10.5(f) 10.5(m) 10.115(f) - 10.330 through 10.332-10-403.

WRIT OF CERTIORARI SHOULD BE ALLOWED

Reasons this Writ of Certiorari should be allowed. The FECA is intended as a wage loss replacement program. I have received benefit payments under FECA for my on the job injury. OWCP only gave trouble when the ALJ granted me disability for the USA Merit Protection Board. This is "a flip flop". OWCP is saying in so many words- yes you were injured on the job but we owe you no more payments directly-but we will pay some medical bills. My case has never closed. Defense, the District Court

and the Sixth Circuit did not challenge my claims of the CFR laws I presented- did not challenge the Administrative Law Judge for the Merit Protection Board or the January 30, 1995 Hearing and did not challenge the FECA Election of Benefits CA -1105. These things are the accepted and usual course of judicial proceeding. The Sixth Circuit, District Court and the defendant departed from them. They exceeded the scope of its delegated authority 5 USCA 8101 et. seg., 8128 (b) and defaulted by now answering the complete complaint 20 CFR 402.205. My First Amendment rights were violated by abridging the freedom of speech and the press and the right to petition the government for redress of grievances. My Fourteenth Amendment rights were violated because I was deprived of due process of law, and equal protection of the laws. Therefore my amendment would not be futile. Please reverse the District Court and The Sixth Circuit and award workers compensation.



Betty L. Sneed pro se

U.S. DEPARTMENT OF LABOR Employment Standards Administration Office of Workers' Compensation	ELECTION OF BENEFITS
U.S. DEPARTMENT OF LABOR Employment Standards Administration Office of Workers' Compensation	File No: A9170039 Date of Injury: 12-29-75 Employee: Betty L. Sneed CSA or CSF No: CSA2-706-240

PART A

I, Betty L. Sneed, hereby elect: (check one)

☑ FEDERAL EMPLOYEES' COMPENSATION ACT benefits in preference to any benefits which I may be entitled to receive under the Civil Service Retirement Act.

☐ CIVIL SERVICE RETIREMENT ACT benefits in preference to any benefits which I may be entitled to receive under the Federal Employees' Compensation Act.

Date	Signature of Employee	Address (including ZIP Code)
2-21-86	Betty L. Sneed	3721 Chelton Rd. Shaker Hts., Ohio 44120

PART B

I, _____, hereby elect: (check one)

☐ FEDERAL EMPLOYEES' COMPENSATION ACT benefits in preference to any benefits which I and/or my minor children may be entitled to receive under the Civil Service Retirement Act.

☐ CIVIL SERVICE RETIREMENT ACT benefits in preference to any benefits which I and/or my minor children may be entitled to receive under the Federal Employees' Compensation Act.

Date	Signature of Employee	Address (including ZIP Code)

STATEMENT OF FACTS BETTY SNEED CASE NO. A9-170030

1. Claimant was born on June 22, 1937 and was employed as a Letter Carrier at the U.s. Post Office in Cleveland, Ohio.
2. On December 29, 1975, claimant fell hurting her left knee.
3. Claimant was referred to Dr. Yosowitz, an Orthopedist, for a torn cartilage and has been under his care to the present.
4. An arthrogram was performed which showed a tear of the left medial meniscus.
5. Claimant was admitted to the hospital on March 30, 1976. On March 31, 1976, a left medial menisectomy was performed. Discharged on April 8, 1976.
6. Claim was accepted for torn cartilage - medical meniscus - left knee.
7. Claimant was off work from February 13, 1976 through June 26, 1976. Returned to duty on June 28, 1976.
8. Claimant was awarded a schedule award for 25% permanent partial loss of use of left knee.
9. Claimant is moderately obese.
10. Claimant was awarded a schedule award for 25% permanent partial loss of use of left knee.
11. The claimant continued to have knee complaints.
12. Claimant stopped work on December 19, 1980 because of her knee. She returned to light duty on December 29, 1980.
13. On November 14, 1981, the claimant was evaluated by J. Richard Nolan, M.D., an Impartial Board Certified Orthopedist.
14. On November 22, 1982, claimant had a recurrence of disability. She returned to light duty on December 27, 1982.
15. On February 27, 1983, additional arthroscopy was denied.
16. Claimant began part-time light duty 5 hours per day February 1983, and has continued on part-time work to the present.
17. On Aug. 30. 1984, the claimant was evaluated by Byron K. Hoffman, MD, an Impartial Board Certified Orthopedist.

U.S. Department of Labor

Employment Standards Administration
File Number: 09-0170030
Washington, DC 20210

January 4, 1995

BETTY L. SNEED
3721 CHELTON
CLEVELAND, OH 44120

File Number:
File Number: 09-0170030

IMPORTANT INFORMATION

PLEASE READ AND RETAIN

Dear Ms. Sneed:

Please take notice that an informal hearing will be held in the above-entitled case before a Hearing Representative of the Office of Workers' Compensation Programs at the following time and place. Beginning promptly on; MON, January 30, 1995 at:

01:00 PM — U.S DEPARTMENT OF LABOR
1240 EAST NINTH STREET
ROOM B1 BASEMENT
CLEVELAND, OH 44199

You or your representative should be present. Information about hearings under the Federal Employees' Compensation Act is contained on the enclosed sheet.

If you no longer desire a hearing, you should request cancellation immediately from the Branch of Hearings and Review, P.O. Box 37117, Washington, D.C. 20013-7117. Your file will then he returned to the district office having jurisdiction of the case. The Code of Federal Regulations provides that costs may be assessed against an individual who fails to appear for a hearing without good cause. Therefore, you should make every effort to appear at the hearing.

Sincerely,

WILLIAM A. USHER
Hearing Representative
TEL (202) 219-6155 FAX (202) 219-5916

Enclosure

US POSTAL SERVICE
INJURY COMPENSATION OFFICE ROOM 106
2200 ORANGE AVE, CLEVELAND, OH 44101

CJR CA1127-0286

Appendix

The United States of American Merit System Protection Board - Chicago Regional Office - July 30, 1985

United States District Court - Northern District of Ohio - Eastern Division - December 26, 2000.

United States Court of Appeals' - Order June 18, 2001

United States Court of Appeals' - Order August 27, 2001

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

IN THE MATTER OF:	Case Number: CH831L8510381
Betty L. Sneed, appellant	Date: July 30, 1985
v.	John H. Pleuss
Office of Personnel Management agency	Presiding Official

INTRODUCTION

By petition filed on April 15, 1985, Ms. Betty L. Sneed appealed the reconsideration decision of the Office Of Personnel Management (OPM) Washington, D.C. which disallowed her application for disability retirement from her position of Letter Carrier with the United States Postal Service in Cleveland, Ohio. A hearing in this case was held on May 31, 1985. For the reasons set forth below, the agency's reconsideration division is reversed.

IURISDICTION

Section 8347(d) of title 5 of the United States Code provides a statutory right of appeal to the Merit Systems Protection Board (Board) from OPM's administrative actions or orders affecting rights or interests under the civil service retirement system. OPM regulations provide for a direct appeal to the Board from a final OPM reconsideration decision concerning disability retirement. 5 C.F.R. 831-1205 (1984). I find that the board has jurisdiction over this appear.

ANALYSIS AND FINDINGS

An employee is disabled if the employed is: "unable because of disease of injury to render useful and efficient service in the employee's position." 5 U.S.C.A. 8337 (a) (West Supp. 1985).

This statute further provides that to be eligible an employee must not be qualified for reassignment to any vacant position in the employing agency at the same grade or level at which the employee was previously employed and at which the employee would be able to render useful and efficient service.

The Board held in Chavez v. Office of Personnel Management, 6 MSPB 343, 352 (1981), that in an appeal from an OPM denial of an employee initiated application for disability retirement, the employee bears the burden of persuasion, by a preponderance of the evidence, theat she is entitled to such retirement. The Board further held that the ultimate disability determination should be based on the probative value of all the evidence, including objective medical findings; diagnoses and expert medical opinions; subjective evidence of pain and disability; and all evidence relating to the effect of the employee's condition upon job performance. Id. at 358-359.

The appellant in this case has been employed for over 17 years under the civil service retirement system as a Letter Carrier. In December of 1975 while carrying mail she slipped on ice and fell injuring her left knee. A pneum oarthrogram performed on her knee February 16, 1976 revealed a complete tear of anterior born of the medical meniscus of the left knee. On March 41, 1976 she underwent arthrotomy of the left knee for a left medical meniscectomy. Following her convalescence from this surgery she returned to work as a mail carrier in June of 1976.

After returning to work she experienced constant pain in her left knee which gradually became worse. In 1978 this pain became unbearable. At that time she was placed on limited duty. Her present limited dury assignments require her to work in different areas performing miscellaneous functions including mail mark-up and mail casing. About 2 1/2 years ago her left knee became unable to support her and a left knee was brace was prescribed. This knee brace has been effective in supporting the weakened knee. The pain in her knee increased, however, and she was required to reduce her working hours to 5 hours per day. In order to alleviate her pain a transcutaneous electrical nerve stimulation (TENS) unit was prescribed. In the most recent medical report concerning her condition, the appellant's pain is described

as a constant aching pain which becomes acute while walking and climbing steps. Letter of Asikin Mentari, M.D., February 6, 1985; Record at tab 1.

The superior officer's statement described the duties of the appellant's letter carrier position as: "standing 3 hours, carrying 25 lbs., and walking for 5 hours, repeated steps and lifting." Agency File at tab D. The supervisor also stated that the medical statements in the employee's file limit the employee in all aspects of her duties and that she cannot do the walking; sitting, standing, and lifting required by her position. Agency File at tab D.

OPM suggests that the appellant's current limited duty assignment rather than her official letter carrier position constitutes the employee's position 1/for purposes of the disability statute. In Pernicano v.

1/The statute refers simply to "the employee's position", 5 U.S.C.A. 8337(a) (West Supp. 1985); formerly the statute was worded "the position last occupied", 5 U.s.C.A. 8331 (6) (West 1980). I find that the phrases are synonymous, and the change in wording has no affect on my analysis.

Office of Personnel Management, 9 MSPB 159 (1982) the Board held that a light duty position may constitute the last position occupied if this position is a "permanent position". In Kirwin v. Office of Personnel Management, 24 M.S.P.R. 683 (1983) the Board found a light duty position for a Postal Service employee to be permanent and thus constituted the position last occupied. In Kirwin the appellant was a Letter Carrier when he applied for disability retirement. However, while his application was pending he accepted a transfer to the position of Distribution Clerk (Modified) on a permanent basis. In this case OPM asserts that the appellant's light duty assignment constitutes her position and that because she is able to usefully and efficiently perform light duties for 5 hours per day she is ineligible for disability retirement.

I find that the appellant's letter carrier position rather than her current light duty assignment constitutes her position for the following reasons. First, unlike the situation in Kirwin, the posi-

tion in this case is not a regularly established position: it has no official title, no fixed duties, and no job description. It consists of an ad hoc compilation of light duty assignments designed to meet the restrictions on appellant's activity required by her physician. although the appellant has been performing light duties since 1978, this fact alone is insufficient to render her current assignment a permanent position. During the l at 2 years the appellant has been limited to 5 hours per day because this is all that she can perform given her current physical restrictions. Thus, the appellant is only working part-time at present. This part-time assignment by the agency is a temporary accommodation for the appellant's physical condition and not a permanent new position.

Several statements of the Postal Service indicate that is considers appellant's position to be that of a letter carrier. In the superior officer's statement, the appellant's supervisor given a description of her duties which is consistent with that of a letter carrier but inconsistent of that of a permanent light duty position: "standing 3 hours, carrying 35 lbs., and walking for 5 hours, repeated steps, and lifting." Further, attached to the medical officer's statement (which states that the appellant is totally disabled) is a position description for the letter carrier position indicating that this position is the one currently occupied by the appellant. Agency File at tab D. I find, therefore that the appellant's position is that of a letter carrier.

In a letter dated November 26, 1984, Gerald M. Yosowitz, M.D., explains the appellant's current medical status by stating that X-rays reversal that as a result of the appellant's initial injury she has developed a post traumatic arthritic condition in her knee. Consequently she must remain in a limited duty status with no prolonged standing or walking and will be unable to return to the position of letter carrier. Agency File at tab B.

The Postal Service supervisor of Employee Services and Benefits certified that there are no vacant positions in the agency at the same grade or level for which the appellant meets the min imum requirements and therefore reassignment is not possible. I therefore find that a preponderance of evidence shows her inability to be reassigned in lieu of a disability retirement. Agency File

at Tab D.

In Meighan v. Office of Personnel Management, 7 MSPB 82 (1981), the Board held that the definition of disability does not contemplate a condition of complete helplessness or inability to perform any of the functions of a particular position. Rather, disability is demonstrated by the employee's inability to perform the functions of her position in a useful and efficient manner. Thus, the appellant need only show that because of her medical condition, she is unable to perform the duties of her position usefully and efficiently.

In weighing all of the evidence in this case, I find that the appellant has presented persuasive subjective and objective evidence to establish, by a preponderance of the evidence, that her disability prevents her from performing the duties of her position in a useful and efficient manner. See generally Chavez v. Office of Personnel Management, 6 MSPB 342, 352 and 355 (1981). The appellant has proven by a preponderance of the evidence her statutory entitlement to a disability retirement annuity.

DECISION

The reconsideration division is reversed. The Office of Personnel Management is hereby directed to approve the appellant's application for disability retirement annuity and to furnish appropriate documentation of this action to the Chicago Regional office of the Board no later than twenty (20) calendar days after this decision becomes final.

This decision is an initial decision and will become a final decision of the Merit Systems Protection Board on Sep. 03, 1985 unless a petition for review is filed with the Board or the Board reopens the case on its own motion.

ADMINISTRATIVE AND JUDICIAL REVIEW

Any party to this appeal, the Director of the Office of Personnel Management, and the Special Counsel may file a petition for review of this decision with the Merit Systems Protection Board. An original and two copies of any petition for review must be

filed with the Clerk of the Board for the Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419 no later than the date above.

The petition must specifically identify the exception taken to this decision, cite and basis for the exception, and refer to applicable laws, rules, or regulations. The Board may grant a petition for review when a party submits written argument and supporting documentation which tend to show that:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed; or
(2) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.

Pursuant to 5 U.S.C. Section 7703 (b) (1), the appellant has the right to seek judicial review of the Board's final division on this appeal. A petition requesting such review must be filed with the U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D. C. 20439. Such a petition may not be filed while the case is pending before the Board. To be timely, the petition for judicial review must be received by the court within 30 days of the final Board decision.

Any party seeking enforcement of a final decision of the Board may file a petition for enforcement with the regional office that rendered the initial decision. Such petition should be directed to the Regional Director and must comply with the requirements of 5 C.F.R. 1201.181 (a).

Payment of attorney fees in an employee-initiated voluntary application for retirement benefits has been determined not to be in the interests of justice. Williams v. Office of Personnel Management, 718 F .2d 1553 at 1557 (Fed Cir. 1983).

For the Board:

John H. Pleuss
Presiding Official

Betty Sneed)
)
v.) Case Number: CH831L8510381
)
Office of Personnel Management)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision was served by regular mail this date to the following:

APPELLANT

Ms. Betty Sneed
3721 Chelton Road
Shaker Heights, Ohio 44120

OTHER

Office of Personnel Management
ATTN: Appellate Policies Branch
1900 E. Street, N.W., Rm. 7459
Washington, D.C. 20415

APPELLANT'S REPRESENTATIVE

Mr. Roy M. Kaufman
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745 Leader Building
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AGENCY REPRESENTATIVE

Franklin L. Lattanzi, Chief
Disability Claims Division
Retirement & Insurance Programs
(Disability Appeals Branch)
Office of Personnel Management
P. O. Box 664
Washington, D.C. 20044

Date: _____

_____
Bea Martus
Legal Technician
Chicago Regional Office

JHP:ev

Appendix

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I hereby certify this instrument document no. 20, filed on 12/16/00 and correct copy of the electronically filed original. Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio

By: _____
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BETTY L. SNEED, Plaintiff	)	CASE NO: 1:00CV1914
v.	)	JUDGE SOLOMON OLIVER, JR.
U.S. DEPT. OF LABOR OFFICE OF WORKERS COMPENSATION FROGRAMS, Defendant	)	ORDER

Plaintiff Betty L. Sneed ("Plaintiff") brings this action against the Defendant U.S. Department of labor, Office of Workers Compensation Programs ("OWCP" or "Defendant") alleging that the Defendant has failed to provide her with documents that she is entitled to in violation of the Freedom of Information Act, 5 U.S.C. § 552, et seq, and the Privacy Act, 5 U.S.C. 522a, et seq. Currently pending before the court is Defendant's Motion for Summary Judgment (ECF No. 18) and Plaintiff's Motion to Amend the Complaint (ECF No. 14). For the following reasons, the Defendant's Motion for Summary Judgment is granted and Plaintiff's Motion to Amend is denied.

I. FACTUAL BACKGROUND

Plaintiff was formerly employed by the U.S. Postal Service. This action stems from the denial of a workers' compensation claim, dating back to a knee injury Plaintiff sustained in December 1975. Plaintiff's claim for workers' compensation for partial disability from August 20, 1985, was denied by the OWCP on July 13, 1993. On July 27, 2000, Plaintiff filed the instant action, alleging that she has not received documents requested from OWCP pursuant to the Freedom of Information Act ("FOIA") and the Privacy Act. Specifically, Plaintiff alleges that she has not received several documents, all entitled

"Memorandum to the Director," dated August 20, 1985, December 30, 1998, July 20, 1999, and March 8, 1996.

In August 5 1999, September 1999, and October 1999, the Defendant provided Plaintiff with three complete copies of her entire OWCP file. All documents regarding Plaintiff's case were contained in the case file that was provided to Plaintiff. No other files regarding Plaintiff's case are maintained by OWCP.

Defendant contends that there are no documents bearing the title "Memorandum to the Director" that correspond to the above-referenced dates contained in Plaintiff's OWCP file. Furthermore, Defendant asserts that no documents exist entitled "Memorandum to the Director" corresponding to the above-referenced dates issued by the OWCP in Plaintiff's case.

II. SUMMARY JUDGEMENT STANDARD

Federal Rule of Civil Procedure 56(c) governs summary judgement motions and provides:

> The judgement sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a judge ment as a matter of law . . .
>
> Rule 56(c) specifies the materials properly submitted in

connection with a motion for summary judgement:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein . . . The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits. When a motion for summary judgement is made and supported as provide in this rule, an adverse party may not rest upon the mere allegations or denial of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgement, if appropriate, shall be entered against the adverse party.

However, the movant is not required to file affidavits or other similar material negating a claim on which its opponent bears the burden of proof, so long as the movant relies upon the absence of the essential element in the pleadings, depositions, answers to interrogatories, and admissions on file.

Celotex Corp. v. Catrell, 477 U.S. 317 (1986).

In reviewing summary judgement motions, this court must view the evidence in a light most favorable to the non-moving party to determine whether a genuine issue of material fact

exists. Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); White v. Turfway Parking Racing Ass'n, Inc., 909 F 2.d 941, 943-44 (6th cir. 1190). A fact is "material" only if its resolution will affect the outcome of the lawsuit. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Determination of whether a factual issue is "genuine" requires consideration of the applicable evidentiary standards. Thus, in most civil cases the court must decide "whether reasonable jurors could find by a preponderance of the evidence that the [non-moving party] is entitled to a verdict." *Id. at 252.*

Summary judgement is appropriate whenever the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex,* 477 U.S. at 322. Moreover, "the trial court no longer has a duty to search the entire record to establish that it is bereft of a genuine issue of material fact." *Street v. J.C. Bradford & Co.,* 866 F .2d 1472, 1479-80 (6th Cir. 1989) *(citing Frito-Lay, Inc. v. Willoughby,* 863 F 2.d 1029, 1034 (D.C. cir. 1988). The non-moving party is under an affirmative duty to point out specific facts in the record as it has been established which create a genuine issue of material fact. Fulson v. City of Columbus, 801 F. Supp. 1, 4 (S.D. Ohio 1992). The non-movant must show more than a scintilla of evidence to overcome summary judgement; it is not enough for the non-moving party to show that there is some metaphysical doubt as to material facts. *Id.*

III. LAW AND ANALYSIS

Defendant argues that Plaintiff fails to state a claim under both the Freedom of Information Act and the Privacy Act because she has not provided any evidence that the OWCP has improperly withheld any documents from her. The FOIA vest jurisdiction in federal courts to enjoy an agency from withholding agency records and to order the production of any agency records improperly withheld from a plaintiff. Kissinger v. Reporters Committed For Freedom Of The Press, 445 U.S. 136, 139 (1980). Thus, federal jurisdiction in FOIA cases is dependent upon a showing that an agency has (1) improperly; (2) withheld; (3) agency records. *Id.* at 150. Moreover, when an agency has demonstrated that it has not withheld requested records, federal courts have no authority to order the production of such records under the FOIA. *Id.* at 139.

OWCP argues that it has provided Plaintiff with all documents responsive to her request. Defendant also contends that Plaintiff offers no evidence, beyond "her own speculation," that any other documents exist. As a result, Defendant argues that it is entitled to summary judgment. The court agrees.

This court has been presented with no evidence that would tend to support Plaintiff's allegation that there are other documents relevant to her claim that have not been produced to her. Plaintiff's offer to the court of assurances received from "a source" simply will not suffice to withstand a motion for sum-

mary judgment. In the absence of any indication that the alleged "Memoranda to the Director" exists, the court finds the Defendant's Motion well taken. Plaintiff also seeks to amend her complaint to add a claim for the benefits denied her by OWCP pursuant to the Federal Employees' Compensation Act ("FECA") (ECF No. 14). A motion to amend should be denied when such an amendment would be futile. Jet v. Sewage Aeration Systems, 165 F.3d 419, 425 (6th Cir. 1999). In the absence of an alleged violation of a clear statutory mandate or constitutional violation, this court does not have jurisdiction to review an OWCP decision denying benefits. *See Owens v. Brock*, 869 F 2.d 1363 (6th Cir. 1988) (5 U.S.C. § 8128 (b) bars, judicial review of any decision by the Secretary allowing or denying a payment pursuant to FECA). Thus, an amendment adding such a claim would be futile. Accordingly, Plaintiff's motion to amend her complaint is hereby denied.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment (ECF No. 18) is granted. Plaintiff's Motion to Amend the Complaint (ECF No. 14 is denied.

IT IS SO ORDERED.

/s/SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

FILE COPY
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 532
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

LEONARD GREEN
CLERK

PAULINE BORDERONE
(513) 564-7044

Geri M. Smith
Northern District of Ohio at Cleveland
201 Superior Avenue, N.E.
Suite 102 U.S. Courthouse
Cleveland, OH 44114

RE: 01-3066
Sneed vs. U.S. Dept of Labor
District Court No. 00-01914

Enclosed is a copy of the mandate filed in this case. The certified record was never sent to this Court on appeal.

Leonard Green, Clerk

Pauline Boderone
Records Management Deputy

cc:
Honorable Solomon Oliver Jr.
Ms. Betty L. Sneed
Ms. Lisa H. Johnson

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BETTY L. SNEED Plaintiff-Appellant, v. U.S. DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Defendant-Appellee.	)	ORDER

BEFORE: BOGGS and SUHRHEINRICH, Circuit Judges; and CLELAND, 'District

Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requesting a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF COURT

_____

Leonard Green, Clerk

FILE COPY

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 01-3066

Filed: August 27, 2001

BETTY L. SNEED

Plaintiff - Appellant

v.

U.S. DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS

Defendant - Appellee

MANDATE

Pursuant to the court's disposition that was filed 6/18/01 the mandate for this case hereby issues today.

A True Copy.

No cost taxed

Attest:

Filing Fee.....$
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Total.....$

Deputy Clerk

IN THE SUPREME COURT OF THE UNITED STATES

Date of term _____

BETTY L. SNEED *Petitioner,*

v.

U.S. DEPARTMENT OF LABOR, OFFICE OF WORKER COMPENSATION PROGRAM *Respondent*

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

PETITION FOR WRIT OR CERTIOR ARI

(NAME ALL ATTORNEYS IF ANY FOR THE PETITIONER)

Betty L. Sneed, prose
Prose
3721 Chelton Road
Shaker Hts., Ohio
216-921-3001

No. 01-3066

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BETTY L. SNEED

Plaintiff-Appellant,

v.
U.S. DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,

Defendant-Appellee.

Before: BOGGS and SUHREHEINRICH, Circuit Judges; CLELAND, District judge."

Betty L. Sneed, an Ohio resident proceeding pro se, appeals a district court judgment dismissing her civil action filed pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a. This case has been referred to a panel of the court pursuant to Rule 34(j) (1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On July 27, 2000, Sneed filed a complaint against the United States Department of Labor, Office of Workers' Compensation Programs (:OWCP"). Sneed alleged that she had requested certain documents from her workers' compensation file under the FOIA and the Privacy Act, but the OWCP refused to provide her with those documents. Specifically, Sneed sought "Memorandums To The Director" dated August 20, 1985, march 8, 1996, December 30, 1998, and July 20, 1999. On November 28, 2000 Sneed filed an amended complaint in which she asserted a claim for workers' compensation benefits that had previously been denied her by the OWCP during the administrative process.

The OWCP filed a motion for summary judgement, to which Sneed responded. On December 26, 2000, the district court granted the OWCP's motion for summary judgement and denied Sneed's motion to amend her complaint. Sneed has filed a timely appeal.

We review the district court's grant of summary judgement de novo. *Kincaid v. Gibson,* 236 F .3d 342, 346 (6th Cir. 2001). Summary judgement is appropriate when the evidence presented shows "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56 (c).

Upon review, we conclude that the district court properly granted summary judgement in favor of the OWCP with respect to Sneed's FOIA/Privacy Act claim. A plaintiff may bring a private cause of action under the FOIA in federal court upon a showing that an agency has improperly withheld its records 5 U.S.C. § 552 (a) (4); *Kissinger v. Reporters Comm.* for Freedom of the Press, 445 U.S. 136, 150 (1980). The agency's possession of the requested documents is an indispensable prerequisite to liability in a FOIA suit. *See Kissinger,* 445 U.S. at 155. A plaintiff "may bring a civil action against an agency that fails to comply with an provision of the [Privacy] Act "in such a way as to have an adverse effect on an individual," *Cardamone v. Cohen,* 241 F .3d 520, 525 (6th Cir. 2001) (quoting 5 U.S.C. § 552a(g) (l)(D)).

The OWCP filed affidavits by two OWCP officials in which both states that they had reviewed official files and that no documents had been withheld. In response, Sneed did not present any evidence that the OWCP possesses the documents she seeks, which is a prerequisite for FOIA liability. *See Kissinger,* 445 U.S. at 155. Since the documents requested by Sneed did not exist, the OWCP did not improperly withhold agency records. *See id.*

We also conclude that the district court properly denied Sneed's motion to amend her complaint. *See Fisher v. Roberts,* 125 F .3d 974, (6th Cir. 1997); *LRL Properties v. Portage Metro Hous. Auth.,* 55 F .3d 1097, 1104 (6th Cir. 1995). In her amended complaint, Sneed claimed that she suffered a knee injury during the course of her employment with the United State Postal Service, which rendered her disabled. A claim for such an injury is covered by the Federal Employees' Compensation Act, which provides the sole avenue for redress. *See* 5 U.S.C. § 8102; *Jones v. TVA,* 948 F .2d 258, 265 (6th Cir. 1991); *McCall v. United States,* 901 F .2d 548, 549 (6th Cir. 1990). Thus, any amendment of Sneed's complaint to add a claim based upon the OWCP's denial of workers' compensation benefits would have been futile. *See* 5 U.S.C. § 8128(b); *Owens v. Brock,* 860 F .2d 1363, 1367 (6th Cir. 1988).

Accordingly, the district court's judgement is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Clerk